In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 425

HERBERT C. ENGLE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

We respectfully invite the attention of the court to the following facts which show that the petition was filed out of time:

On May 19, 1964, the Court of Appeals for the Sixth Circuit affirmed the district court's decision dismissing petitioner's petition for writ of habeas corpus (Pet. 1, 3, 10, Appendix G). The petition for a writ of certiorari was filed ninety-seven days thereafter, on August 24, 1964.

Section 2101(*c*) of Title 28 provides that "any writ of certiorari intended to bring any judgment or decree in a civil action, * * * before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

743-616—64

Since these limits are jurisdictional, the petition should be dismissed as untimely.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

SEPTEMBER 1964.

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